IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 522/2007

DWARKA PRASAD Vs. STATE OF RAJASTHAN

Date of order: 31.05.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. R.P. Garg for the accused-petitioner.
Mr. B.K. Sharma, Public Prosecutor for the State.

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This criminal revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the accused-petitioner against the order dated 01.03.2007 passed by the Additional Chief Judicial Magistrate (Communal Riots), Jaipur City, Jaipur in Criminal Case No. 14/2000, whereby charges have been framed against the accused-petitioner and others under Sections 4, 5/6 of the Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992 (for short 'the RPE Act') read with Sections 381, 420, 120-B IPC.

Brief facts of the case are that on 26.03.99 one Rajendra Singh Shekhawat, SHO, Kotwali, Jaipur reported at Police Station that a person is having a paper of Economics Ist of Senior Higher Secondary

Examination and is selling the same in Mishrarajaji Ka Rasta. On the said information FIR No. 164/99 was registered at P.S. Kotwali, Jaipur City under Sections 4, 5 and 6 of the RPE Act r/w Section 381, 420B IPC.

During investigation it is found that one Jitendra Singh was having a paper of Economics and on investigation it was found that the paper was removed from the papers received in the government Bajoriya Senior Secondary School, Jaipur. After investigation challan was filed against Vijay Pratap Singh, Jitendra Singh, Rakesh Sharma, Hanuman Saini, Suresh Yadav, Vijay Meharwal, Krishan Murari, Vikram Meharwal, Buddhi Prakash Sharma, Masood Ali Khan, Jai Kumar, Sita Ram Meena, Ashok Kumar, Man Singh, Pankaj Chipa and against the present petitioner Dwarka Prasad under Sections 4,5 and 6 of the RPE Act r/w Section 381, 120-B IPC. After filing charge-sheet the trial Court framed charges against the accused-petitioner under Sections 4, 5/6 of the RPE Act read with Sections 381, 420, 120-B IPC vide its impugned order dated 01.03.2007.

Aggrieved and dissatisfied with the said charge order dated 01.03.2007, the present revision petition has been preferred by the accused-petitioner on the ground that the petitioner being Principal of

the Government Bajoriya Senior Secondary School, Nahri Ka Naka, Jaipur authorised Shri M.A. Khan, Examination In-charge to receive the examination papers and these papers were kept after putting seal in the presence of the other teachers which were signed by Shri M.A. Khan and Umesh Sharma and when the examination papers were taken for examination, seal on the papers was intact and as such neither the petitioner has committed any offence as alleged nor he was in any manner in conspiracy with the other co-accused persons.

Learned counsel Mr. Garg appearing on behalf of accused-petitioner further submits that since the petitioner has authorised Shri M.A. Khan, Examination In-charge to receive and distribute examination papers, at the most the petitioner can only be held guilty for supervisory negligence but in any case he cannot be held responsible for theft, cheating and criminal conspiracy as the petitioner is not directly concerned with regard to receiving papers and distribute the same and he has already authorised Shri M.A. Khan to receive and distribute the examination papers.

It is also contended by the learned counsel for the petitioner that with regard to supervisory negligence, departmental enquiry is already initiated

against the petitioner and the same is in progress and, therefore, the charges which have been framed against the petitioner are per se illegal and without any basis.

I have heard learned counsel for the accused-petitioner, learned Public Prosecutor for the State and carefully gone through the impugned order dated 01.03.2007, challan papers submitted by the learned counsel for the petitioner as well as the FIR.

By bare reading of the FIR and challan papers it appears that the petitioner being Principal of the school is responsible to manage the affairs of the school and he has authorised Shri M.A. Khan, Examination In-charge to receive the examination papers, though it was contended by the learned Public Prosecutor appearing for the State that the papers should be received by the Principal himself and should be kept in his custody and the petitioner cannot authorise anybody to receive the same.

Since the petitioner has authorised Shri M.A. Khan to receive and distribute the examination papers, in the light of RPE Act it is to be seen as per Sections 4, 5 and 6 of the RPE Act, whether the petitioner as he has authorised Shri M.A. Khan, is

responsible for the offences under Sections 4, 5/6 of the RPE Act or not?

Sections 4, 5 and 6 of the Rajasthan Public Examination (Prevention of Unfair Means) Act, 1992 read as under:-

> **"4. Unauthorised possession or disclosure or question paper.-** No person who is not lawfully authorised or permitted by virtue of his duties so to do shall, before the time fixed for distribution of question papers to examinees at a public examination-
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> (a) procure or attempt to procure or possess, such question paper or any portion or copy thereof; or
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> (b) impart or offer to impart, information which he knows or has reason to believe to be related to, or derived from or to have a bearing upon such question paper.
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> **5. Prevention of leakage by person entrusted with examination work.-** No person who is entrusted with any work pertaining to public examination shall, except where he is permitted by virtue of his duties so to do, directly, or indirectly divulge or cause to be divulged or make known to any other person any information or part thereof which has come to his knowledge by virtue of the work being so entrusted to him.
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> **6. Penalty.-** Whoever contravenes or attempts to contravene or abets the contravention of the provisions of,-
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> (i) section 3, shall be punishable with imprisonment for a term

> which may extend to three years or with fine which may extend to two thousand rupees or with both; and
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> (ii) section 4 or section 5, shall be punishable within imprisonment for a term which shall not be less than five years but which may extend to seven years and with fine which may extend to ten thousand rupees."

A bare perusal of Section 4 of the RPE Act would reveal that if anybody having possession of question paper who is not lawfully authorised or permitted by virtue of his duties so to do shall before the time fixed for distribution of question papers to examinees at a public examination, procure or attempt to procure or possess such question paper or any portion thereof; or impart or offer to impart information which he knows or has reason to believe to be related to, or derived from or to have a bearing upon such question paper.

As the petitioner being Principal of the school lawfully authorised to procure the question papers but he has authorised Shri M.A. Khan for the purpose, therefore, offence under Section 4 of the RPE Act is not made out against the accused-petitioner.

Similarly as per Section 5 of the RPE Act which provides leakage by person entrusted with examination work as it is not disputed that the work has been entrusted to Shri M.A. Khan, therefore, offence under Section 5 of the RPE Act also not made out against the accused-petitioner.

Since offences under Sections 4 and 5 of the RPE Act are not made out against the petitioner, offence under Section 6 of the RPE Act which deals with 'Penalty' automatically not attracted.

At the most the petitioner has misused his power in authorising Shri M.A. Khan to receive the examination papers and distribute the same, but no offence under Sections 4, 5/6 of the RPE Act read with Sections 381, 420, 120-B IPC is made out against the accused-petitioner and it is also informed to this Court that the departmental enquiry is already initiated against the petitioner with regard to supervisory negligence and the same is in progress.

In view of these facts and circumstances of the case, the impugned order dated 01.03.2007 passed by the Additional Chief Judicial Magistrate (Communal Riots), Jaipur City, Jaipur framing charge under Sections 4, 5/6 of the RPE Act read with Sections 381,

420, 120-B so far as present petitioner Dwarka Prasad is concerned, is herewith quashed and set-aside.

The revision petition stands allowed.

(K. S. RATHORE), J.

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